

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 JEFFREY CHARLES MYERS,

5 Plaintiff,

6 v.

7 MARTIN O'MALLEY, Commissioner of  
8 Social Security,

9 Defendant.

Case No. 3:24-CV-00197-CLB

**ORDER CONCERNING REVIEW  
OF SOCIAL SECURITY CASES**

10 The Court notes that the instant case involves judicial review of administrative  
11 action by the Secretary of Health and Human Services denying Plaintiff's claim for  
12 disability benefits under the Social Security Act.

13 The Court recognizes that many of these cases have a number of factors in  
14 common:

15 1. Such cases rarely, if ever, require any proceedings in the nature of a trial.  
16 Instead, these cases are usually resolved by cross-motions to reverse or remand and to  
17 affirm the Secretary's decision.

18 2. Sometimes Plaintiff submits new medical reports to the Court in support of  
19 a request for remand at such a late date in the proceedings as to cause an unnecessary  
20 and undesirable delay in the rendering of a decision by the Court.

21 3. The transcript of the evidence adduced at the administrative hearing  
22 frequently contains the words, "inaudible" or "illegible" in some places, and the  
23 administrative record sometimes contains documents which are illegible. These parts of  
24 the administrative record may or may not relate to the question of whether the Secretary's  
25 decision is supported by substantial evidence.

26 **THEREFORE, IT IS ORDERED:**

27 1. Defendant shall submit the administrative record, under seal, to CM/ECF  
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1 within **seven (7) days** of the filing of the Answer.<sup>1</sup> The record shall be filed in a searchable  
2 PDF format with each exhibit linked separately and Optical Character Recognition  
3 performed.<sup>2</sup>

4 2. In the event Plaintiff intends to request a remand of this case on the basis  
5 of new medical evidence, Plaintiff shall file within **sixty (60) days** of the filing of the  
6 administrative record, a motion to remand in this Court based on new medical evidence,  
7 with a copy of the evidence attached to the motion.

8 3. In the event Plaintiff serves a motion for remand on the basis of new medical  
9 evidence on the Defendant, pursuant to the provisions of this Order, the Defendant shall  
10 have **thirty (30) days** from the date of service of such motion to file either a notice of  
11 voluntary remand of the case or points and authorities in opposition to Plaintiff's motion.  
12 Plaintiff may file a reply to Defendant's opposition within **twenty (20) days**.

13 4. If Plaintiff seeks remand for consideration of new medical evidence, the  
14 motion shall include a statement of reasons why the new evidence was not incorporated  
15 into the record at an earlier stage. Under 42 U.S.C. § 405(g) remand for reconsideration  
16 of new evidence will not be granted unless the evidence is new and material and there is  
17 a showing of good cause for failure to incorporate the evidence into the record at an  
18 earlier stage.

19 5. In the event Plaintiff does not file a motion to remand on the basis of new  
20 medical evidence, the Plaintiff shall, within **sixty (60) days** of the filing of the  
21 administrative record, file with this Court a motion for reversal and/or remand.

22 6. Whenever Plaintiff files a motion for reversal and/or remand, which includes  
23 issues based on the administrative record, Plaintiff's motion shall include:

24 (a) A specification of each and every condition or ailment, or  
25 combination thereof, that allegedly renders Plaintiff disabled and is allegedly supported

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26 <sup>1</sup> If an answer is not filed, the Court will construe the certified administrative record  
27 as an answer pursuant to Fed. R. Civ. P. Supp. Sec. 4(b).

28 <sup>2</sup> No paper copies or CD of the administrative record shall be filed unless directed  
by the Court.

1 by evidence contained in the administrative record.

2 (b) A complete summary of all medical evidence in the record that  
3 supports Plaintiff's claim of disability due to each condition or ailment specified in  
4 subparagraph 5(a) above, with precise references to the applicable portions of the record.  
5 This summary shall not include medical evidence unrelated to the conditions or ailments  
6 upon which Plaintiff's claim or claims of disability are based. It shall be sufficient  
7 compliance with this subparagraph if Plaintiff shall stipulate that the Administrative Law  
8 Judge fairly and accurately summarized the medical evidence contained in the record.

9 (c) A complete summary of all other evidence adduced at the  
10 administrative hearing that supports Plaintiff's claim of disability due to each condition or  
11 ailment specified in subparagraph 5(a) above, with precise references to the applicable  
12 portions of the record. It shall be sufficient compliance with this subparagraph if Plaintiff  
13 shall stipulate that the Administrative Law Judge fairly and accurately summarized the  
14 evidence adduced at the administrative hearing.

15 (d) With respect to each condition or ailment specified in subparagraph  
16 5(a) above, a complete but concise statement as to why the record does not contain  
17 substantial evidence to support the Defendant's conclusion that Plaintiff is not disabled  
18 by each such condition or ailment, or combination thereof.

19 7. If Defendant has not filed a notice of voluntary remand and the issues in  
20 question relate to the administrative record, the Defendant, within **thirty (30) days** after  
21 being served with Plaintiff's motion for reversal and/or remand, shall file a cross-motion  
22 to affirm which will be considered an opposition to Plaintiff's motion. This motion shall  
23 include:

24 (a) With respect to each disabling condition or ailment specified by  
25 Plaintiff, a complete summary of all medical evidence in the record that the Defendant  
26 contends constitutes substantial evidence to support the administrative determination that  
27 Plaintiff is not disabled due to such condition or ailment or combination thereof. This  
28 summary shall not include medical evidence unrelated to conditions or ailments upon

1 which the Plaintiff's claim or claims of disability are based. It shall be sufficient compliance  
2 with this subparagraph if the Defendant shall stipulate that the Administrative Law Judge  
3 fairly and accurately summarized the medical evidence contained in the record.

4 (b) With respect to each disabling condition or ailment specified by  
5 Plaintiff, a complete summary of all testimony adduced at the administrative hearing,  
6 including the Administrative Law Judge's findings, if any, concerning the credibility of  
7 witnesses, which the Defendant contends constitutes substantial evidence to support the  
8 administrative determination that Plaintiff is not disabled due to such condition or ailment,  
9 or combination thereof. It shall be sufficient compliance with this subparagraph if the  
10 Defendant shall stipulate that the Administrative Law Judge fairly and accurately  
11 summarized the testimony adduced at the administrative hearing.

12 (c) A statement as to whether there are any inaccuracies in the  
13 summaries filed by Plaintiff in response to paragraphs 5(b) and 5(c) of this Order. If the  
14 Defendant believes Plaintiff's summaries are inaccurate, Defendant shall set forth what  
15 additions or corrections are required (with appropriate references to the record) in order  
16 to make the summaries accurate.

17 (d) The lay definitions of all medical terms contained in the record  
18 necessary to be understood in order to determine whether the Defendant's decision is  
19 supported by substantial evidence.

20 8. The motions filed by Plaintiff and Defendant pursuant to paragraphs 5 and  
21 6 of this Order, respectively, shall also contain appropriate points and authorities dealing  
22 with the specific legal issues involved in this case, rather than principles of law applicable  
23 to Social Security cases in general.

24 9. Plaintiff shall be deemed to have acceded to the accuracy of the summaries  
25 supplied by the Defendant in response to subparagraphs 6(a) and 6(b) of this order, and  
26 to all definitions of medical terms supplied by the Defendant in respect to subparagraph  
27 6(d) of this Order, unless within **twenty (20) days** after being served with Defendant's  
28 motion to affirm Plaintiff shall file and serve a document setting forth:

- 1 (a) In what manner the summaries are inaccurate;  
2 (b) What additions or corrections are required (with appropriate  
3 references to the record) in order to make the summaries accurate; and/or  
4 (c) Any definitions of the medical terms that Plaintiff contends are more  
5 accurate than the definitions supplied by the Defendant.

6 10. The motions filed by both Plaintiff and Defendant shall also contain the  
7 following:

8 (a) A statement as to whether the transcript of the administrative hearing  
9 can be adequately comprehended in spite of the fact that such transcript may contain the  
10 words "inaudible" or "unintelligible" in one or more places, and specifying each page, if  
11 any, in which testimony relating to the particular issues of this case cannot be adequately  
12 comprehended.

13 (b) A specification of each page in the administrative record that is  
14 partially or totally illegible, and a statement whether each such illegible page contains  
15 information relevant to an understanding of any issue presented in this case.

16 11. Oral argument shall be deemed waived and the case shall stand submitted  
17 unless argument is ordered by the Court or requested, pursuant to Local Rule 78-1, by  
18 one of the parties within **ten (10) days** following the filing of the last document required  
19 by this Court.

20 **DATED:** August 20, 2024.

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23 **UNITED STATES MAGISTRATE JUDGE**  
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